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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,690	09/11/2000	Mark John Berry	PM271641	9282

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EXAMINER
WHITE, EVERETT NMN

ART UNIT	PAPER NUMBER
1623	14

DATE MAILED: 01/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/600,690	BERRY ET AL.	
	Examiner	Art Unit	
	EVERETT WHITE	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 May 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 5-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 5-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. The amendment filed October 28, 2002 has been received, entered and carefully considered. The amendment affects the instant application accordingly:

(A) Claim 10 has been amended.
(B) Comments regarding Art Rejection have been provided drawn to
  (a) 102(b) rejection, rendered moot by new ground of rejection over newly cited US Patent.
  (b) 103(a) rejection, rendered moot by new ground of rejection over newly cited US Patent.

2. Claims 1 and 5-11 are pending in the case.

3. The text of those sections of title 35, U. S. Code not included in this action can be found in a prior Office action.

Finality Withdrawn

4. The finality of the rejection of the last Office action is withdrawn in view of the application of new art and the reasons disclosed below.

Claim Rejections - 35 USC § 112

5. Claims 1 and 5-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 5-11 are indefinite because it is not clearly stated in the claims whether or not the polysaccharide conjugate comprising polysaccharides and a particle carrying perfume includes compositions thereof. It is noted in Claim 1 that the particle carrying perfume may be physically attached to the polysaccharide, which include compositions containing each of the components.

Claims 1 and 5-11 are indefinite because it is not clearly indicated in the claims how the polysaccharide is bound to the cellulose. Is the binding via a covalent bond, ionic bond, etc. or does the polysaccharide and cellulose come together as a composition?

In Claim 11, the phrase "said perfume carrying particle" lacks clear antecedent basis, which renders the claim indefinite. Claim 1, which Claim 11 depends from, discloses the phrase "particle carrying perfume".

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1 and 5-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Cottrell et al (US Patent No. 5,801,116), newly cited.

The Cottrell et al patent discloses a polysaccharide composition that comprises absorbent properties and is useful in absorbent articles of manufacture. See the last line of column 2 to column 3, line 4 of the Cottrell et al patent, wherein the polysaccharide may be selected as polygalactomannans such as guar gum and locust bean gum. This paragraph also indicates that the polysaccharide materials may be combined with other known materials that include carbohydrates. See column 8, 4th paragraph of the Cottrell et al patent wherein a list of materials that can be combined with the absorbent polysaccharides that include cellulose fiber, cellulose fluff, and cellulose grafted polymers, which anticipate the polysaccharide conjugate being capable of binding to a cellulose of the instant claims. The Cottrell et al patent further

disclose liquids that can be added to the compositions thereof to form absorbent materials for products for a wide variety of use that include cosmetics (see column 8, line 59). See column 9, lines 31 and 32 of the Cottrell et al patent wherein specific uses of the compositions in cosmetics products include fragrance retention agent and fragrance releasing gel, which anticipates the polysaccharide conjugate of the instant claims being chemically or physically attached to a particle carrying perfume.

8. Applicant's arguments with respect to Claims 1 and 5-11 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1, 6-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cottrell et al (US Patent No. 5,801,116).

Applicants claim a polysaccharide conjugate comprising a polysaccharide attached to a particle carrying perfume, the polysaccharide conjugate being capable of binding to cellulose, and products incorporating the polysaccharide conjugate.

The Cottrell et al patent discloses a polysaccharide composition that comprises absorbent properties and is useful in absorbent articles of manufacture. See the last line of column 2 to column 3, line 4 of the Cottrell et al patent, wherein the polysaccharide may be selected as polygalactomannans such as guar gum and locust bean gum. This paragraph also indicates that the polysaccharide materials may be combined with other known materials that include carbohydrates. The polygalactomannans disclosed in the Cottrell et al patent include compounds that have side chain galactose residues (see column 4, 1st paragraph), which would expect to be susceptible to oxidation by galactose oxidase as set forth in instant Claim 6. See column 8, 4th paragraph of the Cottrell et al patent wherein a list of materials that can be combined with the absorbent polysaccharides that include cellulose fiber, cellulose fluff, and cellulose grafted polymers, which embraces "the polysaccharide conjugate being capable of binding to cellulose" of the instant claims. Cottrell et al also teaches the use of several types polygalactomanns (see column 4, 1st paragraph) that can be used as the polysaccharide component of the composition, which embraces the tara galactomannan and cassia galactomannan set forth in instant Claim 5. The Cottrell et al patent further discloses liquids that can be added to the compositions thereof to form absorbent materials for products for a wide variety of uses, which include cosmetics (see column 8, line 59). See column 9, lines 31 and 32 of the Cottrell et al patent wherein specific uses of the compositions in cosmetics products include fragrance retention agents and fragrance releasing gels, which embrace the polysaccharide conjugate of the instant claims which require chemical or physical attachment of the polysaccharide to a particle carrying perfume. The instant claims differ from the Cottrell et al patent by indicating

that the product may be selected as a fabric washing product and fabric conditioning product (see instant Claim 9). However, the phrases "fabric washing" and "fabric conditioning" only indicates how the product will be used. A difference in intended use cannot render a claimed composition novel. Note In re Tuominen, 213 USPQ 89 (CCPA, 1982); *In re Pearson*, 494 F2d 1399; 181 USPQ 641 (CCPA, 1974); and *In re Hack* 114 USPQ 161. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the instantly claimed polysaccharide conjugated to a perfume particle because the Cottrell et al patent discloses the components of the instantly claimed composition and explicit motivation to use said components, specifically a polysaccharide and a perfume particle to facilitate preparation of fragrance retention agent containing compositions of matter.

11. Applicant's arguments with respect to Claims 1 and 5-11 have been considered but are moot in view of the new ground(s) of rejection.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cottrell et al (US Patent No. 5,801,116).

Applicants claim a method of targeting binding of a particle carrying perfume to cellulose which comprises providing a polysaccharide which is chemically or physically attached to a particle carrying perfume to form the polysaccharide conjugate and target binding said conjugate to said cellulose.

The Cottrell et al patent discloses a polysaccharide composition that comprises absorbent properties and is useful in absorbent articles of manufacture. See the last line of column 2 to column 3, line 4 of the Cottrell et al patent, wherein the polysaccharide may be selected as polygalactomannans such as guar gum and locust bean gum. This paragraph also indicates that the polysaccharide materials may be combined with other known materials that include carbohydrates. See column 8, 4th paragraph of the Cottrell et al patent wherein a list of materials that can be combined with the absorbent polysaccharides that include cellulose fiber, cellulose fluff, and cellulose grafted polymers, which embraces "the polysaccharide conjugate being capable of binding to cellulose" of the instant claims. The Cottrell et al patent further discloses liquids that

can be added to the compositions thereof to form absorbent materials for products for a wide variety of uses, which include cosmetics (see column 8, line 59). See column 9, lines 31 and 32 of the Cottrell et al patent wherein specific uses of the compositions in cosmetics products include fragrance retention agents and fragrance releasing gels, which embrace the polysaccharide conjugate of the instant claims which require chemical or physical attachment of the polysaccharide to a particle carrying perfume. The instantly claimed invention differs from the Cottrell patent by using the term "target binding" which does not appear to denote a particular procedure. The instant specification appears to teach that the only requirement for target binding is for the polysaccharide conjugate to come into close proximity to a surface containing cellulose, which has been demonstrated in the utility of the compositions disclosed in the Cottrell et al patent. For example, see the list for the intended use of the compositions starting at column 8, line 64 to column 9, line 32, which suggests that the products comprises perfume type agents, polygalactomannans and cellulose materials within the same fabric. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the instantly claimed method of targeting binding of a particle carrying perfume to cellulose because the Cottrell et al patent discloses the components for use in the instantly claimed method of targeting binding a particle carrying perfume to cellulose and explicit motivation to use said components, specifically a polysaccharide and a perfume particle to facilitate the binding of fragrance retention agent containing compositions to cellulose materials.

13. Applicant's arguments with respect to Claims 1 and 5-11 have been considered but are moot in view of the new ground(s) of rejection.

14. Claims 1, 7-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ibe (US Patent No. 4,818,751).

Applicants claim a polysaccharide conjugate comprising a polysaccharide that may be selected as mannan, which is chemically or physically attached to a particle carrying perfume, the polysaccharide conjugate being capable of binding to cellulose.

In Examples 3 and 6, the Ibe patent discloses an emollient composition comprising mannan and perfume, which embraces the polysaccharide conjugate of the instant claims when the polysaccharide is physically attached to a particle carrying perfume. The instant claims differ from the polysaccharide composition of the Ibe patent by claiming that the polysaccharide conjugate as being capable of binding to cellulose. However, at column 1, lines 7-20, Ibe suggests that cellulose may be used in cosmetics for there excellent moisture-retaining or thickening effect properties. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant(s) invention to incorporate cellulose into a cosmetic composition comprising mannan and perfume since the Ibe patent teaches that cellulose provides excellent moisture retaining or thickening effect for cosmetic compositions.

15. Applicant's arguments with respect to Claims 1, 7-9 and 11 have been considered but are moot in view of the new ground(s) of rejection.

Summary

16. All the pending claims (Claims 1 and 5-11) are rejected.

Examiner's Telephone Number, Fax Number, and Other Information

17. For 24 hour access to patent application information 7 days per week, or for filing applications, please visit out website at **www.uspto.gov** and click on the button "Patent Electronic Business Center" for more information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is (703) 308-4621. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reach on (703) 308-4624. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

E.White

James O. Wilson
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